

Domestic Violence & Family Law: A Response-Based Perspective

Dignity Conference 2015: Response-Based Practice in Action

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Te Ūranga Waka, School of Māori Studies, EIT, Taradale, Hawke's Bay

Hosted by: Te Ūranga Waka: School of Māori Studies, Eastern Institute of Technology & Response-Based Practice Aotearoa. In association with Centre for Response-Based Practice.

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*Acknowledging Gratitude to be a Visitor on the
Traditional Territory of The Maori people*



Aboriginal Women and Children Fleeing Abuse Forum



Presentation for the BC Society of
Transition Houses Annual Training Forum
October 23, 2014, Richmond, BC

Working With Human Beings

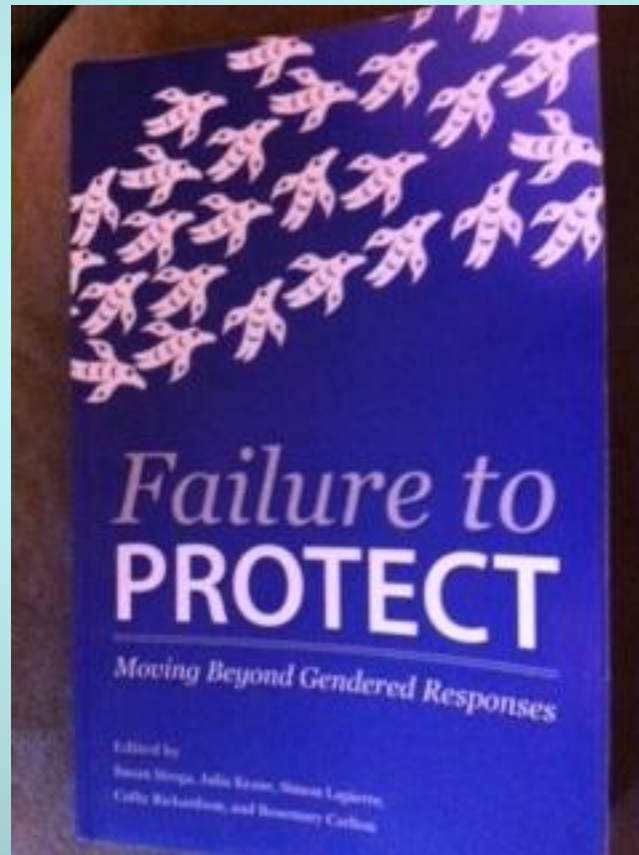
We are interested in what people already know and do so we can help them see that and build on that, explore their values & celebrate their competencies.



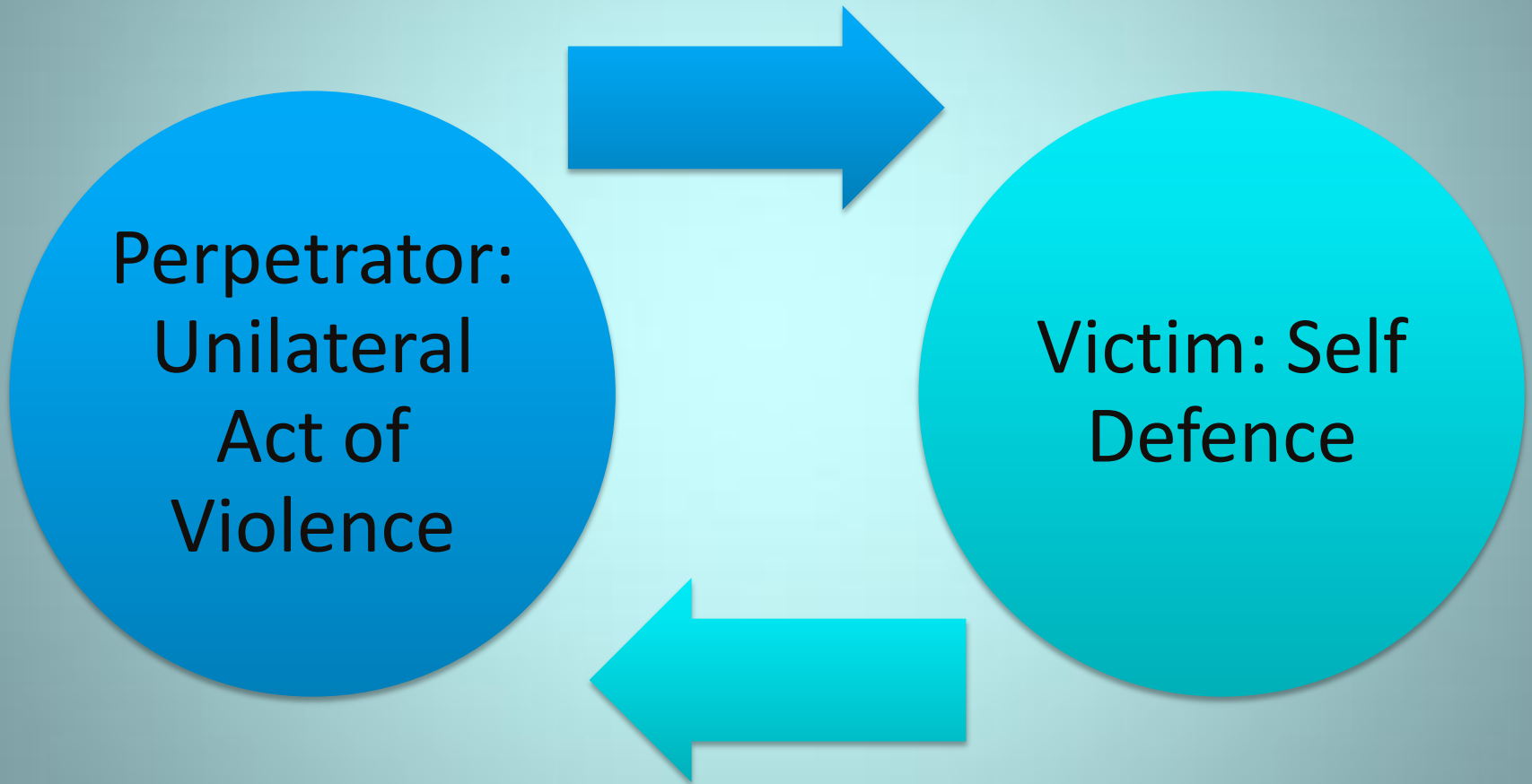
Issues for Rehaul in Family Law

- Problems of analysis (eg. Failure to Protect
- Victim Blaming/Mother-blaming)
- Fairness under the law
(assumption of equality of resources)
- Mutualizing (e.g. restorative processes)
- Psychological Assessments
- Accurate and Contextualized Risk
Assessment

Mother-blaming in the Helping Professions



Social Responses and Mutualizing:



Social Responses and Mutualizing: Argument vs. Wife Assault



When you attack the mother-child bond, you attack the very soul of women, their very hope for the future, their very reason for living. This is the reason so many perpetrators of violence seek custody of children.

Reflections from Panel:



The Importance of Accurate Risk Assessment

(Canadian) Police reported 82 intimate partner homicides in 2012, with the majority (83%) involving a female victim. The rate of intimate partner homicide in 2012 was consistent with rates recorded over the previous five years. Rates of intimate partner homicide continued to be higher for females than males, regardless of the age group.

Of the intimate partner homicides in 2012, just under one-half (46%) were committed by a current or former legally married spouse, while about one-quarter (27%) were committed by a current or former common-law partner. The remainder of intimate partner homicides were committed by either some other type of intimate partner such as a current or former dating partner (22%), or a same-sex partner (5%).

<http://www.statcan.gc.ca/daily-quotidien/131219/dq131219b-eng.htm?HPA>

Issues in domestic violence cases

The history of negative social responses is ignored

Victim resistance is overlooked or misinterpreted

Offender portrayed as out of control, lacking skills or awareness

Mutualizing: Violence is portrayed as mutual conflict, dispute

Misuse of attachment theory

“Alienating” mothers vs. protective mothers

Mothers responsible for relationship between fathers and children

Kelly and Johnson Typology of Violence

Coercive Controlling Violence

A pattern of emotionally abusive intimidation, coercion, and control coupled with physical violence against partners.

Nearly half of physically abused women also report forced sex (i.e., sexualized assault) and others report abusive sex (i.e., sexualized assault)

Violent Resistance

Both women and men may, in attempts to get the violence to stop or to stand up for themselves, react violently to their partners who have a pattern of Coercive Controlling Violence.

“The research on intimate partner violence has clearly indicated that many women resist Coercive Controlling Violence with violence of their own.” (484)

Situational Couple Violence

Similar rates by men and women, as measured by large survey studies and community samples, are based on the Conflict Tactics Scales.

Minor forms of violence are typical of Situational Couple Violence, it can escalate into more severe assaults with serious injuries.

Thirty-two percent of perpetrators (all men) had committed at least one act of severe violence. High rates of injury. All serious injuries were women.

Separation- Instigated Violence

Violence that first occurs in the relationship at separation.

Problems with Kelly and Johnson Typology

The extent and forms of victim resistance are ignored.

The CTS decontextualizes the violence and ignores differences in power, gender, severity and injuries.

The CTS is mutualizing.

The category Situational Couple violence can include one or more instances of severe violence by men – not equally by women.

The notion that “Situational Couple” violence is gender symmetric, or equal, ignores the frequency and severity of injuries to women and that men commit the more severe forms of violence

The category violent resistance is applied only to women and is equated with unilateral violence by men. This is clear bias against women. As a form of self-protection, it is not violence in the same sense as the other types.

Custody and Access Reports

- Psychological tests produce false positives
- MMPI-2 and MCMI-III especially problematic.
- CDS, TSI, IASC blame and pathologize victims
- Poor analysis of violence
- Assumption that children should see father regardless
- Uncritical use of “parental alienation”
- No real participation of children (adults have already decided)
- Children’s resistance is ignored

MCMI (Milton Clinical Multi-Axory Inventory) Scientific Properties

A psychological assessment tool intended to give information on psychopathology, including specific disorders outlined in DSM-4. It is intended for adults who are currently seeking mental health services. It was developed and standardized specifically on clinical populations (i.e. patients in psychiatric hospitals or people with existing mental health problems). The authors are very specific that it should not be used with the general population or adolescents. MCMI-III shows little agreement with structured interviews so it is difficult to judge the accuracy of personality disorder assessment.

Millon failed to establish the construct validity of Axis II personality disorders.

The test is diagnostically inaccurate and likely to produce false positive diagnoses in 4 of 5 cases (80%).

No validity is established for the anxiety, depression, and dysthymia scales.

The personality theory underlying the test is not empirically validated.

Only mental patients were used in the development of the test.

The MCMI-II and MCMI-III cannot establish wellness or lack of pathology.

Misuse in Court Proceedings: Custody and Access and Parenting Assessments

The MCMI-II & MCMI-III do not meet the “Daubert” test for scientific evidence for court proceedings. Psychologists should be explaining how their use is valid in each testing situation.

A majority of psychologists rated the MCMI-III unacceptable for court proceedings.

No one asks psychologists to show that these tests are valid as parental assessments. Therefore, women are not getting equal access to the law.

The test assumes a diagnosis should be given in all cases.

Researchers stress the MCMI-III is unfair in court proceedings, especially custody determinations, as the test is not fair for women.

Misuse by Psychologists

Psychologists over extend its use, making unsupported claims.

More than two thirds of psychologists in U.S. sample are unaware of the lack of validity of the MCMI-II and MCMI-III for court proceedings.

The test is still used widely in child custody (53%) and parental termination (34%) cases.

Many psychologists using the MCMI-III rely overly on computer-generated reports, which produce false positive diagnoses of psychopathology.

Is used to predict parenting but there is no evidence showing MCMI-III is predictive of parenting.

Women and Children's Responses

- Profound grief
- Substance use to dull grief and intense fear
- Refusal to be content
- Suspicion of professionals, intense emotions
- Desperate actions of protection

Changed Into

- Mental disorder (depression; delayed development, defiance disorder), evidence of child abuse
- Substance abuse
- Mental disorder such as depression, personality disorder; defiance disorder
- Mental disorder such as borderline personality disorder
- Violence; suicide



Gender Bias

Many (35%) psychologists say the MCMI-III suffers from gender bias.

The personality theory underlying the test, drawn from evolutionary psychology, is gender biased against women.

Gender differences in how the raw scores are transformed into base rate scores of the test scales are not supported by the frequency of these disorders in the general population

.

In cases of domestic violence, the gender bias in the test means women are more likely to receive a diagnosis than men, especially “personality disorder”.

Components in Complete and Accurate Situational Analysis/Assessment

Clear descriptions of abusive actions:

Clear language showing unilateral nature of the violence, deliberation, control. Attention to immediate social context.

Victim responses and resistance:

Clear descriptions of victim responses, overt and covert, open and disguised. Also attention to child responses and resistance.

Social responses to victim and offender:

The quality of specific social responses and the relationship between social responses and victim and offender actions in context.

Victim and offender responses to social responses:

How do victim and offender respond to informal and formal social responses. This is tied to the forms of victim resistance and perpetrator violence.

Separation and alleged “alienation” case

Couple with 1 child separate. Some aggression/violence by man, no reports.

Mother custodial parent, open visits at first.

Father often aggressive, yelling at exchanges. Mother slows visits.

Son reports fear of father.

Mother picks son up one day. Son reports, “Daddy punched me”.

Mother calls child protection, who refuse to investigate “custody and access dispute”. Mother calls supervisor, who agrees but sends out worker.

Mother takes son to doctor and police. Son discloses choking, bruising visible.

Mother phones child protection, who refuse to talk to doctor or police.

Social worker attends home. Refuses to talk with mother alone.

Defends father, having never met him. Tells mother she is anxious, to get therapy. Says mother is “alienating” son from his father.

Mother finds family law team, tries to get safety plan and co-parenting plan.

Husband agrees to counselor, then threatens with lawyer, begins to control plan.

“With respect to Count 1, Criminal Harassment, I simply believe that given the evidence that I have heard, it would be unsafe to convict on that Count. I refer to the fact that there certainly was an extremely angry, dysfunctional relationship between these two people. That there were things that Mr. Gordon said, and did, that might have upset Ms. Young but then she not only let him back into her life . . . she welcomed him back into her life. I simply cannot, under those circumstances, convict on Count 1.”

“With respect to Counts 2 [uttering threats] and 3 [assault], however, we are now at the very end of this terrible relationship”.



Rape in Marriage Example



Reflection from Panel

Judge's Comments

The offender and complainant, consistent with their status as man and wife, shared a bed in the bedroom. In the early morning, the complainant awoke to find her self lying on her stomach with the offender on top of her. She felt pain in her vaginal area and soon realized that the offender was engaging in an act of penile vaginal penetration. The complainant informed the offender that he was hurting her and requested that he stop. The offender continued to have sexual intercourse with the complainant. The complainant again requested, indeed demanded, that the offender cease his activities. She tried to push the offender off but was unable to do so because of their weight differential. The offender continued to have sexual intercourse with the complainant until he ejaculated, at which time he rolled off the complainant.



A Court is entitled to have regard to the effect upon a victim of an offender's criminal conduct but only in regard to the consequences of an offence that were intended or could reasonably have been foreseen. I am persuaded that the offender was genuine when he said, "I had no idea that there was going to be like a long-term major effect on you".



Judge's Comments cont'd.

Dr. Fried states and I accept that the offender is genuine in his desire to address his offending. A very detailed report has been prepared by Dr. Fried in which he analyzes the circumstances in which the offences came to be committed, namely and adjustment disorder with a disturbance of conduct and a personality trait involving adventurous risk-taking and a tendency to be rather compulsive.



Summary

- Sexualized assault is mutualized .
- Judge contextualizes as normal marriage and mutualizes the assault in two ways; as sexual intercourse and as part of conjugal relations.
- Judge minimizes use of force.
- Psychologist minimizes violence, suggests it is a result of “adventurous risk-taking” and “compulsiveness”.
- Because the attack is sexualized, not seen as physical and psychological attack using force, the offender could seem to not know that there would be negative consequences. Why would you think “impulsive” or “adventurous” sex would be harmful?



The term “social responses” refers to how family and friends, professionals, and the larger society (e.g., media, news, govt.) respond before and after violence is disclosed.

A majority of victims report receiving negative social responses.
Examples: Wife-assault, child sexualized abuse.

The quality of social responses may be the single best predictor of:

- the level of victim distress
- victim involvement with authorities
- victim disclosure of abuse

Already marginalized, oppressed people are more likely to receive negative social responses.



What are Social Responses?

How others respond to victims, offenders and others involved during and after the violence.

Examples:

- Family
- Therapist
- Court
- State
- Friends

Positive Social Responses

Secure recovery, less distress, more cooperation with authorities

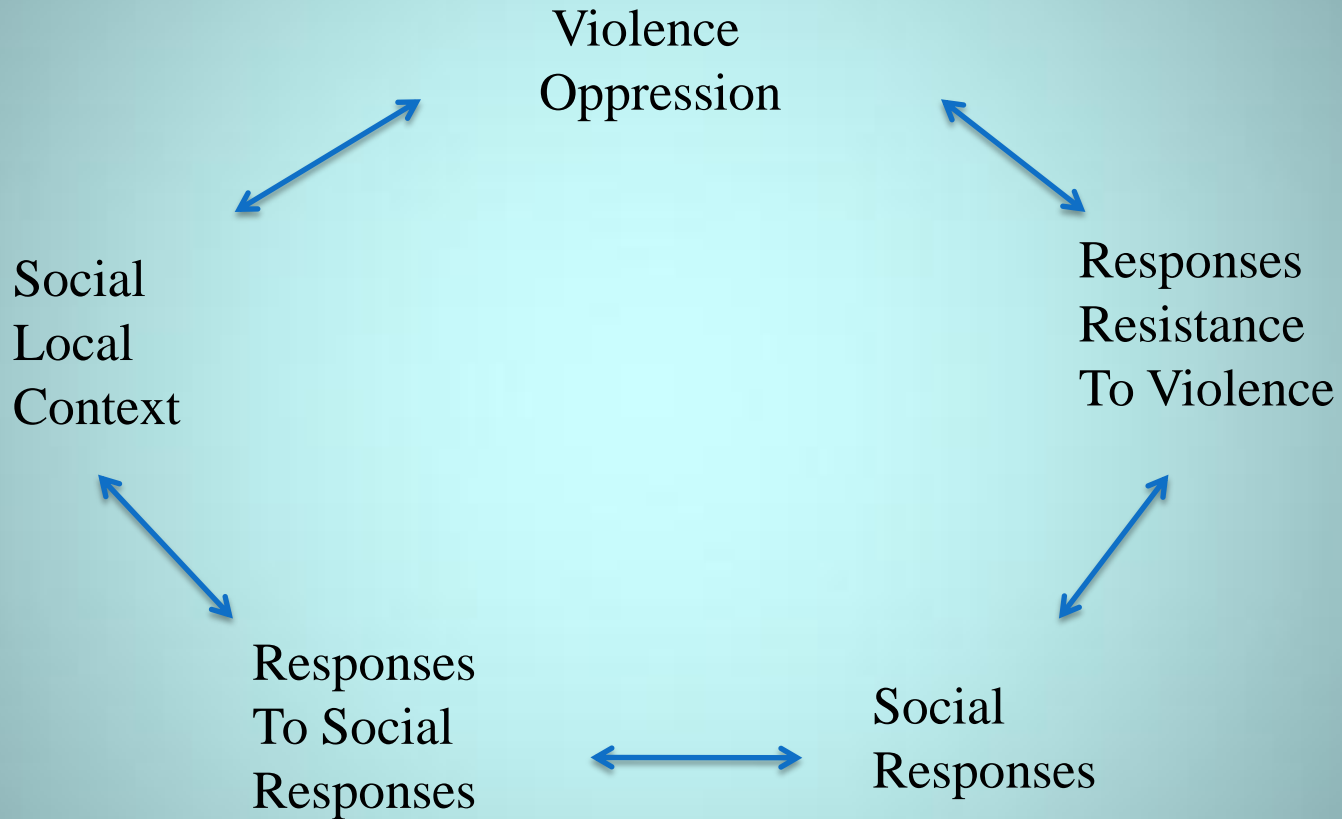
Negative Social Responses

More lasting/intense distress, more diagnoses, less disclosure/cooperation

Already marginalized people (LGBTQ, Indigenous, Disabled, Poor) are more likely to receive negative social responses.



Social Responses in Context



Language and Social Responses

How the crime is “represented” is a social response.

Portrays the victim and offender

Reflects social categories and biases

Benefits some and not others

Has immediate consequences for all

Becomes precedent in law

Is used in media

Is the basis for theory and research

Is the basis for professional and academic work/theory

Note: Visual representation is included.



False Descriptions and Social Responses

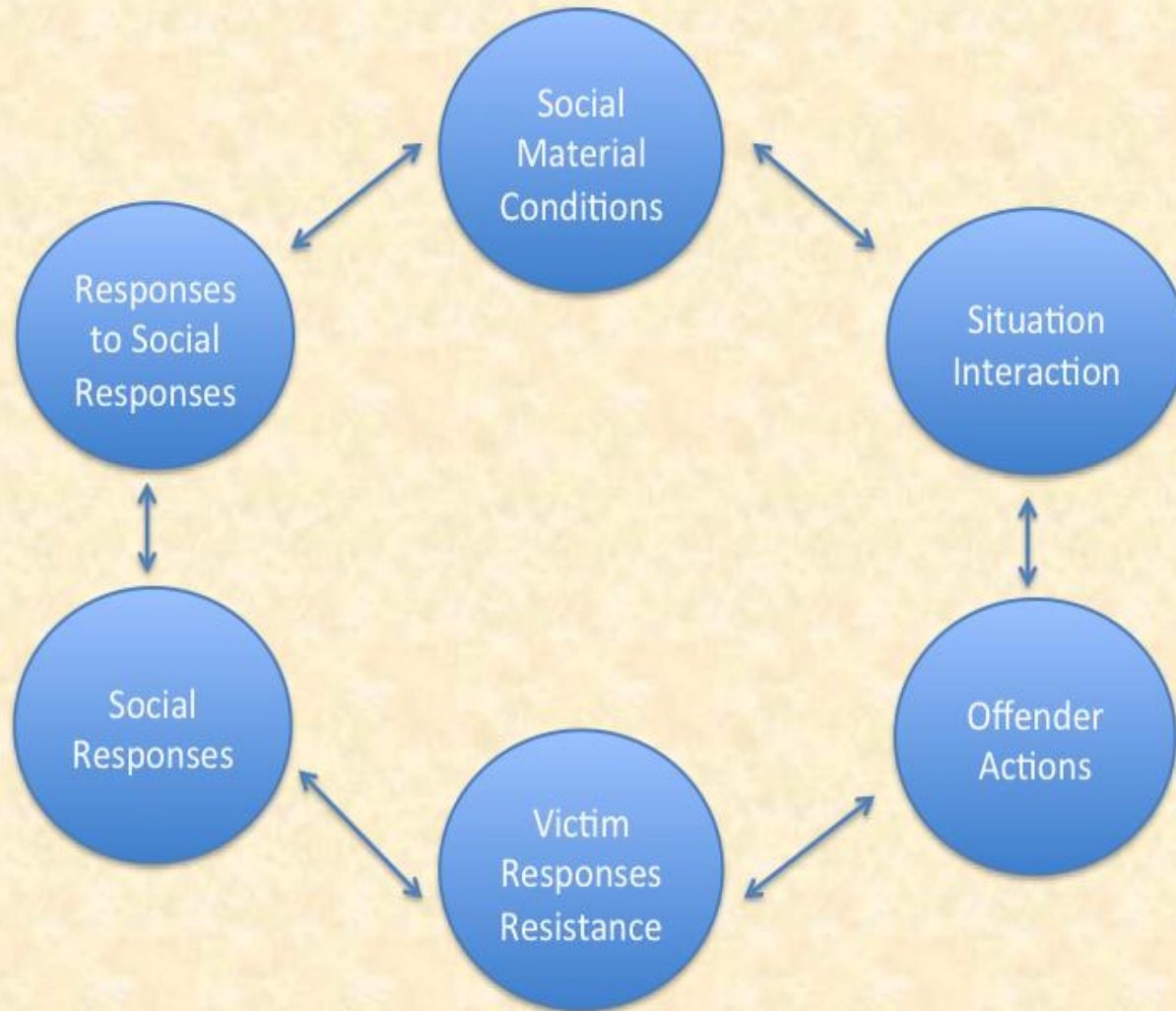
Negative social responses are built on false and prejudicial descriptions.

Research shows that violent crimes, victims, offenders are often misrepresented in criminal justice, media, mental health, and so on.

- Although victims invariably respond and resist, they are often portrayed as passive or only as affected or impacted.
- Although violence is deliberate, offenders are often portrayed as out of control, helpless victims of their biology or emotions.
- And, although violence is unilateral, it is often portrayed as mutual.



Response-Based Contextual Analysis



Indigenous Context: Excerpts from the Literature

Moffitt et al. (2013) note the success of culturally contextualized community-grown and responsive anti-violence innovations gaining traction in the Yukon (Kaushee's Place & Northern Territories (p. 6).

This indicates that Response-Based Practice might be very well situated to support what is already known and done to maintain community cohesion and safety.



Indigenous Context

Hunt (2014) notes current naming of violence against Indigenous women in overarching ways can work to efface contextualized systemic analysis, writing that: “...the language of ‘the missing women’ masks the brutal reality of how they become ‘missing’” (p. 191). Hunt (2014) writes that:



“...colonial violence may be understood as more than just interpersonal abuse – it is inherent in the systems that have shaped how we define ourselves and relate to one another as Indigenous people. It should go without saying that healing from violence requires rebuilding our individual and collective strength rather than reinforcing the power of the state. By centering local Indigenous knowledge in our understanding of leadership, honor, strength, and love, we can redefine “power” as well as “violence.” This requires reclaiming our stories and our cultural teaching in order to raise up the girls in our communities and respect them as leaders, mothers, warriors, and knowledge keepers” (p. 192).

Indigenous Context

Richardson (2006) writes that “Métis identity creation is enacted on a foundation of two life-affirming beliefs that are also foundational to both Response-Based ideas (Wade, 2000) and systemic communication theory (Watzlawick, Beaven, Bavelas & Jackson, 1967): first, that people possess pre-existing ability; and second, that people know how to be well” (p. 58).



Ontario Domestic Assault Risk Assessment: What Is It?

- Reputation as a reliable actuary tool to assess men who use IPV for recidivism, frequency and severity of their use of future violence against female partners.
- Developed from a study of 589 perpetrators known to the Ontario Provincial Police.
- Based on 13 questions on risk factors most strongly associated with recidivism.
- Of the 13 ODARA questions, 10 are reported by the victim during an interview with an assessor and 4 are informed by law enforcement documentation. Each item is scored 0 or 1 and the sum of all the questions is the number associated with a man's risk rank.
- ODARA only considers specific acts of physical violence.
- Each question has perimeters that define the behaviours under scrutiny and include what does and does not count as the behaviour being assessed.
- New Zealand uses the ODARA.

Ontario Domestic Assault Risk Assessment: Minding The Gaps

- The ODARA tool uses the Conflict Tactics Scales Physical Violence Subscale from at 1979 publication.
- RBP discourse analysis reveals that the language and grammatical constructions used in the ODARA are problematic.
- The ODARA ranks only physical violence.
- The ODARA privileges narrow descriptors of behaviour – lack of context.
- The ODARA interviewing guides suggest phrasing that may lead to negative social response to a victim.
- The ODARA constructs the victim as a passive recipient of help rather than an agentic person who resists violence.



Assessing Risk From Response-Based Practice Framework

Logo Art entitled “Speak” by Coast Salish and Kwakwaka'wakw
Artist Maynard Johnny Jr.



Sample Question:

Is the perpetrator a man who was interned in a Canadian residential school where he experienced violence, abuse and humiliation? Without recourse? What happened if he tried to report the abuse?

Sample Scoring:

If the answers are yes, yes, and no one helped him, then there would be a higher likelihood of repeated violence.

Sample Question:

Another sample RBP risk assessment question here

Sample Scoring:

Another sample RBP risk assessment scoring rationale here

Assessing Risk From Response-Based Practice Framework



Coates and Wade (2007) observing that if perpetrators' efforts to conceal their violence and counter victims' resistance is successful, that "the question of how the perpetrator attempted to suppress the resistance cannot come up for consideration, and the victims' apparent lack of resistance becomes the focus of assessment" (p. 7).

Richardson and Wade (2013) write that "Islands of Safety work requires eliciting accurate descriptions and analyses of both safety and risk, as well as accurately documenting the many ways that mothers resist violence" (p. 153).

Assessing Risk From Response-Based Practice Framework



Coates and Wade (2007) conclude that a social justice response that endeavors to reverse violence seeks to: “expose violence, clarify offenders’ responsibility, elucidate and honour victims’ responses and resistance, and contest the blaming and pathologizing of victims” (p. 521).

Response-Based Practice recognizes spectral resistance to violence and seeks to identify risks associated with constrained safety options.

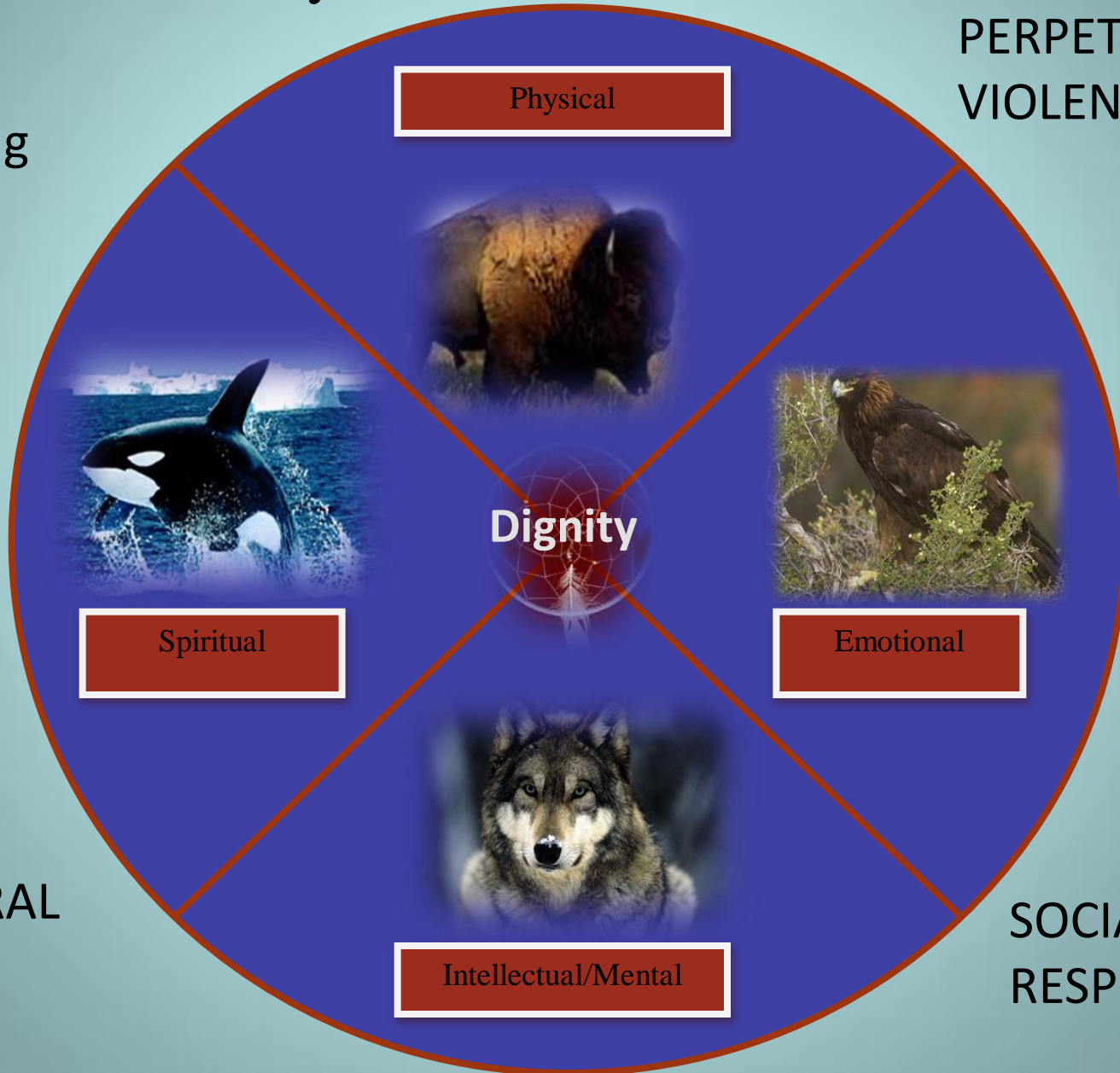
The Medicine Wheel of Responses

Cathy Richardson, Ph.D.

CONTEXT

e.g.
Pre-existing
biases
and isms

PERPETRATOR
VIOLENCE



STRUCTURAL
VIOLENCE

SOCIAL
RESPONSES

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All my relations!!
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